

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch**

**Lagrange One Stop,**

**Appellant,**

**v.**

**Case Number: C0205581**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Lagrange One Stop (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Appellant in a letter dated September 20, 2018.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provides that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

**CASE CHRONOLOGY**

The Ohio Department of Public Safety conducted an investigation of the compliance of Lagrange One Stop with Federal SNAP law and regulations from January 19, 2018 through February 13, 2018. The investigation report documents the following:

1. On January 19, 2018, personnel working at Appellant committed SNAP violations where store personnel knowingly exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash for

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food products previously purchased with SNAP benefits;
2. On February 9, 2018, store personnel knowingly exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food products previously purchased with SNAP benefits and
  3. On February 13, 2018, store personnel knowingly exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food products previously purchased with SNAP benefits. The buying or selling of SNAP benefits for cash or consideration other than eligible food is trafficking as defined under 7 CFR § 271.2.

As a result of evidence compiled from this investigation, the Retailer Operations Division informed the Appellant, in a letter dated September 6, 2018, that it was charged with violating the terms and conditions of the SNAP regulations. The letter stated, in relevant part, that:

Your firm is charged with trafficking, as defined in Section 271.2 of the SNAP regulations. As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for the trafficking violation(s) ... is permanent disqualification.

The charge letter also stated that:

Under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000.00 in lieu of permanent disqualification of a firm for trafficking. The SNAP regulations, Section 278.6(i), list the criteria that you must meet in order to be considered for a CMP. If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter.

In correspondence dated September 13, 2018, Appellant, through counsel, responded to the charge letter and generally stated that Appellant understands that there is very little that can be done via this letter with respect to countering the charges. Appellant indicated that it understood the consequences of what occurred. Appellant stated that not the owner but the husband of the owner committed the acts. Ownership's husband does not speak English and was filling in because of the difficulty they were having in finding an employee while the owner was out ill. Appellant's spouse is not an owner or affiliated with the business. The owner has no other violations and have always attempted to comply to the best of their ability with all federal, state and local requirements. Counsel stated that my client would abide by whatever determination the U.S. Department of Agriculture will make in its best judgment.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a determination letter dated September 20, 2018. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because the Appellant

failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated September 28, 2018, the Appellant requested an administrative review of the Retailer Operations Division's determination. The appeal was granted.

### STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). In particular, 7 CFR § 278.6(a) and (e)(1)(i) establishes the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, inter alia: "... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ..."

7 CFR § 271.2 states, inter alia: "Trafficking means "the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;..."

7 CFR § 278.6(e)(1)(i) states, in relevant part, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2."

7 CFR § 278.6(a) states, inter alia: "FNS may disqualify any authorized retail food store... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through *on-site investigations*...." [Emphasis added]

7 CFR § 278.6(f)(1) states, inter alia: "FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm's disqualification would cause hardship to [SNAP] households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices... A civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a permanent disqualification."

7 CFR § 278.6(b)(2)(ii) states, inter alia: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence ... that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).”

7 CFR § 278.6(i) states, inter alia: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

### **SUMMARY OF THE CHARGES**

During an on-site investigation, the Ohio Department of Public Safety Enforcement Agents conducted three compliance visits at Appellant. The investigation report documents the following:

1. On January 19, 2018, a clerk who was subsequently identified, as 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Store Owners husband, knowingly exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food products previously purchased with SNAP benefits.
2. On February 9, 2018, a clerk who was subsequently identified, as 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Store Owners husband, knowingly exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food products previously purchased with SNAP benefits.
3. On February 13, 2018, a clerk who was subsequently identified, as 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Store Owners husband, knowingly exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food products previously purchased with SNAP benefits.

### **APPELLANT’S CONTENTIONS**

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

1. My client clearly understands what happened where the store was remiss in its actions.
2. Her husband only works when she cannot be there or is ill. In addition, he has no financial ownership interest in the store.
3. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) understands the grave consequences of what occurred and simply would ask that she be allowed to pay a fine in order to allow the store to continue with business. Without such she will be forced to close the store and walk away from a small business that supported six people.

Appellant provided a signed, notarized Affidavit in support of its position. The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

### **ANALYSIS AND FINDINGS**

Appellant does not dispute that trafficking violations occurred in its store. Instead, Appellant contends that ownership's husband was responsible for the violations and has no financial ownership or interest in the store. Appellant, through counsel, also contends that the owner has no other violations and have always attempted to comply to the best of their ability with all federal, state and local requirements. With regard to these contentions, it is important to note that a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of the violations upon which they are based. There is no provision in the Act, regulations, or agency policy that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees. Moreover, as owner of the store, Appellant is liable for all violative transactions handled by either paid or unpaid store personnel. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food Stamp Act and the enforcement efforts of the USDA. Therefore, Appellant's contentions do not constitute valid grounds for dismissal of the current charges of trafficking or for mitigating the impact of those charges.

### **CIVIL MONEY PENALTY**

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy to prevent SNAP violations. Appellant was advised of this provision in the charge letter of September 6, 2018, which also advised that documentation of eligibility for that alternative sanction had to be provided within a specific time limit. Such documentation must establish that there was an effective compliance policy and training program and that both were in effect and implemented *prior* to the occurrence of violations. In the absence of any such documentation, Retailer Operations Division did not impose a civil money penalty in lieu of permanent disqualification.

Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## **CONCLUSION**

As previously stated, 7 CFR § 278.6(e)(1)(i) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.” The law and regulations do not provide for a lesser period of disqualification for this violation.

Based on a review of the evidence in this case, there is no question that program violations did occur during an Ohio Department of Public Safety Enforcement investigation. All transactions cited in the letter of charges were conducted or supervised by an Agent with the Ohio Department of Public Safety Enforcement and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record is specific and accurate with regard to the dates of the violations, including the exchange of cash for food products previously purchased with SNAP benefits, and in all other critically pertinent details. The decision to impose a permanent disqualification against Lagrange One Stop is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any complaint is filed, it must be filed within thirty (30) days of receipt of this decision.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If the USDA receives such a request, it will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

Monique Brooks  
Administrative Review Officer

April 17, 2019